

1 THE HONORABLE MARSHA J. PECHMAN
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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 NANCY WISE,

10 Plaintiff,

11 v.

12 VERIZON COMMUNICATIONS, INC.,
13 formerly known as GTE, a Delaware
14 Corporation, PLAN FOR GROUP
15 INSURANCE and METROPOLITAN LIFE
16 INSURANCE COMPANY, a foreign
17 insurer licensed to do business in the State
18 of Washington,

19 Defendants.

20 No. C08-0409 MJP

21 DEFENDANTS' MOTION TO DISMISS
22 PURSUANT TO RULE 12(b)(6)

23 NOTE ON MOTION CALENDAR:

24 FRIDAY, JUNE 6, 2008

25 **I. RELIEF REQUESTED**

26 Defendants Verizon Communications, Inc., Plan for Group Insurance, and Metropolitan
27 Life Insurance Company (collectively "Defendants") move this Court for an order dismissing
28 each of Plaintiff Nancy Wise's ("Plaintiff") four causes of action brought under the Employee
29 Retirement Income Security Act of 1974 ("ERISA") 29 U.S.C. § 1001 et. seq. and state law.
30 Plaintiff's Complaint fails to state a claim and should be dismissed pursuant to Fed. R. Civ. P.
31 12(b)(6) because Plaintiff's various causes of action are (1) barred by the applicable statute of
32 limitations, (2) barred because Plaintiff has not alleged damage to the plan itself; (3) barred
33

DEFENDANTS' MOTION TO DISMISS
PURSUANT TO 12(b)(6) - 1
Case No. C08-0409 MJP

Seattle-3416609.1 0010932-00016

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1 because ERISA specifies – and limits – the availability of equitable relief; and (4) Plaintiff's
2 state-law claims are preempted by ERISA.

II. STATEMENT OF FACTS

Plaintiff was employed by Defendant Verizon Communications, Inc. (“Verizon”), formerly GTE, from 1995 to 1997. Plaintiff resigned in 1997 and was re-employed by Verizon in March 1999. Plaintiff was employed in Verizon’s Yellow Pages operation, sometimes referred to as the “Directories” company. E.g., Complaint Exh. 2, p. CF000240 (Exhibit A hereto)¹. As part of her contract of re-employment, Verizon allegedly agreed to bridge Plaintiff’s service back to her original date of hire in 1995. Declaration of Angela Bryan, Complaint Exh. 1, p. 1 (Exhibit B hereto, p. 1). The alleged agreement to bridge Plaintiff’s service was memorialized by memo one year later. Complaint, Exh. 2, p. CF 000085, (Exhibit C hereto) (hereafter, the “Bridging Memo”) The Bridging Memo confirmed Plaintiff’s adjusted service date of December 19, 1995, a date used to administer her “non-pension benefits, such as vacation eligibility, short-term sickness disability benefits, etc.” Id.

Plaintiff's application for long-term disability benefits was originally approved, but later discontinued by Defendant Metropolitan Life Insurance Company ("MetLife") Id., Complaint, Exh. 2, p. CF 000150; (Exh. D hereto, p. 3). MetLife notified Plaintiff that her LTD benefits were being discontinued by letter dated July 16, 2001. Complaint, p.4, Factual Allegations, ¶ 15. Plaintiff's benefits ceased as of August 1, 2001. Complaint, p. 10, Prayer for Relief ¶ 1.

Plaintiff thereafter pursued her internal appeals. On March 8, 2002, Verizon's Claims Review

¹ All facts necessary for this motion are drawn from Plaintiff's Complaint, or the exhibits attached thereto. Because Plaintiff included approximately 900 pages of exhibits with her Complaint, the few relevant pages will be attached hereto for the convenience of the Court, and referred to in this brief in the order they are attached hereto.

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1 Committee made its final determination and denied Plaintiff's appeal of the withdrawal of her
 2 long-term disability benefits. Id., p.1. Verizon promptly communicated its denial to Plaintiff by
 3 letter dated March 14, 2002. Id., pp. 1-5.

4 In November, 2006, Verizon "spun off" its Directories operations into an independent
 5 company, Idearc, Inc.² Verizon no longer exercises any ownership or control over Idearc.
 6

7 Plaintiff waited more than six years after her benefits were discontinued to file this action
 8 alleging that Defendants improperly denied her long-term disability benefits and seeking the
 9 recovery of her benefits dating back to August 1, 2001. Plaintiff sets forth four causes of action:
 10 (1) recovery of employee benefits under ERISA; (2) breach of fiduciary duty under ERISA; (3)
 11 equitable relief; and (4) breach of contract, fraud, misrepresentation, negligence, and other
 12 unspecified common law and statutory duties.
 13

14 III. ARGUMENT

15 A. Plaintiff's Claims Should be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(6).

16 Fed. R. Civ. P. 12(b)(6) provides, *inter alia*, that:

17 Every defense, in law or fact, to a claim for relief in any pleading, whether a claim,
 18 counterclaim, cross-claim, or third party claim, shall be asserted in the responsive
 19 pleading thereto if one is required, except that the following defenses may at the option of
 20 the pleader be made by motion: ... (6) failure to state a claim upon which relief can be
 21 granted...

22 Dismissal for failure to state a claim is appropriate if the plaintiff's complaint does not set forth
 23 "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v.
Twombly, ___ U.S. ___, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).

24

25 ² "Verizon U.S. yellow pages to go solo as Idearc," Seattle Post-Intelligencer
 26 Technology Briefing, October 19, 2006, available at
http://seattlepi.nwsource.com/business/289208_tbrfs19.html (visited May 14, 2008). The Court
 may properly take judicial notice of this public transaction. ER 201(b).

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1 In considering a Rule 12(b)(6) motion, a court is generally limited to reviewing the
 2 contents of the complaint. Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001).
 3 However, where a plaintiff files a complaint with exhibits, those exhibits are deemed part of the
 4 complaint and are therefore properly considered by a court on a 12(b)(6) motion. Hal Roach
 5 Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990). Further,
 6 where facts in the exhibits contradict allegations in the complaint, a court may disregard the
 7 contrary facts in the complaint. Sprewell, 266 F.3d at 988.

8 **B. All of Plaintiff's Causes of Action Fail to State a Claim Because they are Barred by
 9 the Applicable Statutes of Limitations**

10 A motion to dismiss for failure to state a claim is appropriate when the dates and facts set
 11 forth in the complaint demonstrate that a claim is untimely under the applicable limitations
 12 period. Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980).

13 **1. Plaintiff's First Cause of Action (Recovery of Employee Benefits) is Time
 14 Barred**

15 a. Plaintiff's cause of action for recovery of employee benefits is barred by
 16 the statute of limitations under R.C.W. 4.16.080³

17 ERISA does not provide a statute of limitations for a cause of action related to a claim for
 18 benefits brought under Section 502(a)(1)(B). Wetzel v. Lou Ehlers Cadillac Group Long Term
 19 Disability Ins. Program, 222 F.3d 643, 646 (9th Cir. 2000). Courts therefore apply the most
 20 analogous state statute of limitations, generally that which governs an action for breach of
 21 contract. Reed v. United Transp. Union, 488 U.S. 319, 323, 327 (1989); Flanagan v. Inland
 22 Empire Elec. Workers Pension Plan & Trust, 3 F.3d 1246, 1252 (9th Cir. 1993) (the most
 23 analogous Washington statute is that which limits contract actions).

24
 25
 26 ³ Plaintiff's claim for violation of a contract contained in paragraph 45 of her Complaint
 is subject to the same statute of limitations analysis and therefore is not separately analyzed.

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1 Plaintiff was employed by Verizon in Washington and thus Washington law provides the
 2 applicable statute of limitations for Plaintiff's cause of action to recover long-term disability
 3 benefit—but under Washington law there are two possible limitations periods applicable to an
 4 action in contract. An “action upon a contract in writing, or liability express or implied arising
 5 out of a written agreement” shall be commenced within six years. RCW 4.16.040(1). However,
 6 if a contract is not in writing, it is governed by the three-year statute of limitations applicable to
 7 oral contracts⁴. RCW 4.16.080(3). To constitute a written agreement subject to the six-year
 8 statute, a writing must contain all of the essential elements of a contract: “*the subject matter of*
 9 *the contract, the parties, the promise, the terms and conditions and (in some but not all*
 10 *jurisdictions) the price or consideration.*” Bogle & Gates, P.L.L.C. v. Zapel, 121 Wn. App. 444,
 11 448-49, 90 P.3d 703 (2004) (internal quotations omitted) (emphasis added).

12 Where a contract is “not a complete expression of all terms to which the parties have
 13 agreed,” a party may resort to parol evidence to the extent such evidence is not inconsistent with
 14 the written terms. DePhillips v. Zolt Const. Co., Inc., 136 Wash.2d 26, 32-33, 959 P.2d 1104
 15 (1998). However, where parol evidence is required to establish any one of the requisite essential
 16 elements of a contract, “the contract is partly oral and the three-year statute of limitations
 17 applies.” Barnes v. McLendon, 128 Wn.2d 563, 570, 910 P.2d 469 (1996); Bogle & Gates,
 18 P.L.L.C., 121 Wn. App. at 450-51 (six-year statute of limitations inapplicable where letter lacked
 19 agreement of party, confirmed oral agreement, and required resort to parol evidence); Browning
 20 v. Howerton, 92 Wn. App. 644, 650, 966 P.2d 367 (1998) (six-year statute of limitations
 21 inapplicable to real estate contract that failed to state price).

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 23
 24
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 26 ⁴ Flanagan applied the six-year limitation, but it appears the court only considered a
 written contract on the particular facts of that case; the court applied the six-year statute, without
 any discussion whatsoever of the effect if the contract is partly oral. 3 F.3d at 1252.

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1 In this case, Plaintiff is explicit as to the subject matter of this dispute: she readily admits
 2 that it is “the long-term disability plan [that is] at issue in this case.” Complaint, ¶ 2. While
 3 Plaintiff has competently alleged an oral agreement that her service would be bridged, there is no
 4 writing suggesting that the “long-term disability plan at issue” applies to her. Because the key
 5 essential elements of the contract are absent, Wise’s contract for employment with Verizon was
 6 therefore partly oral and subject to a three-year statute of limitations.
 7

8 Preliminarily, the fact that the long term disability plan itself is in writing is of no
 9 assistance to Plaintiff. The plan does not identify Plaintiff by name, or in any other way, as an
 10 employee covered by the plan⁵. As the Washington Supreme Court has concluded when
 11 choosing between the application of the three-year or six-year contract statute of limitation, if the
 12 document at issue does not identify the parties, the three-year statute applies. DePhillips is
 13 dispositive. The plaintiff there commenced an action challenging the termination of his
 14 employment, alleging that it violated the provisions of an employee handbook applicable to him.
 15 Like the plan at issue here, the handbook did not “name or identify plaintiff.” 136 Wash.2d at
 16 29, 959 P.2d at 1107. The court’s conclusion as to the effect of the handbook’s failure to name
 17 the plaintiff was unambiguous: “Thus, at the least it does not sufficiently establish the parties to
 18 and the terms and conditions of a contract. Accordingly, the six-year statute of limitations in
 19 RCW 4.16.040(1) does not apply.” Id. The plan cannot support an argument for a six-year
 20 limitation.
 21

22 Plaintiff does attempt to identify some other writing for her claim. Complaint, ¶ 9
 23 (identifying the Bridging Memo). Fatal to Plaintiff’s claim, though, the closest thing articulated
 24

25

⁵ Because it is voluminous, Defendants do not attach the plan to this Motion. It is,
 26 however, available to the Court as Exhibit 3 to Plaintiff’s Complaint.

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1 in the Bridging Memo relevant to the subject matter of this dispute is “non-pension benefits,”
 2 which expressly include benefits “such as vacation eligibility, short-term sickness disability
 3 benefits, etc.” Exh. D hereto. The Bridging Memo does not state that Plaintiff’s long-term
 4 disability benefits are included in the non-pension benefits agreed to be bridged. Id. The
 5 absence of the subject matter – Plaintiff’s long-term disability benefits – precludes a finding that
 6 all essential elements are contained within the Bridging Memo, and that the Bridging Memo is
 7 thus a contract in writing. Bogle & Gates, P.L.L.C., 121 Wn. App. at 448-49. Further,
 8 establishing the subject matter by reading long-term disability benefits into the Bridging Memo
 9 would require Plaintiff to resort to parol evidence, thereby invoking the three-year statute of
 10 limitations for partly oral contracts. Barnes, 128 Wn.2d at 570.

12 Plaintiff attempts to buttress her claim that the Bridging Memo includes long-term
 13 disability benefits by offering the declaration of Angela Bryan, GTE’s District Sales Manager at
 14 the time Plaintiff became re-employed. Exh. B hereto. Bryan’s declaration recites Bryan’s
 15 “understanding” of the terms of Plaintiff’s re-employment and is parol evidence. Plaintiff cannot
 16 convert the Bridging Memo into a written contract in order to avoid the statute of limitations by
 17 putting forth a one-sided written statement years after the fact. Bogle & Gates, P.L.L.C., 121
 18 Wn. App. at 450-51.

20 Thus, the Bridging Memo cannot satisfy the writing requirement because one of the most
 21 essential elements of a contract – the subject matter – is absent. The contract governing
 22 Plaintiff’s re-employment is therefore partly oral and governed by a three-year statute of
 23 limitations. Moreover, in this case the equities do not favor Plaintiff. If she had not slept on her
 24 rights, a timely filed claim would have been filed while Verizon’s Directories company was
 25
 26

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1 under its control. Now, solely by virtue of Plaintiff's delay, Verizon's former Directories
2 company, now Idearc, will be a stranger to this litigation. Plaintiff's cause of action is time-
3 barred and must be dismissed for failure to state a claim.

b. Even if the six-year statute of limitations applies, Plaintiff's Complaint is untimely

6 Plaintiff's LTD benefits were discontinued by letter dated July 16, 2001. Her benefits
7 ceased as of August 1, 2001. Under the law enunciated in the Ninth Circuit, Plaintiff's cause of
8 action accrued then, and her Complaint is untimely.

10 The Ninth Circuit’s standard for accrual of a cause of action for denial of ERISA benefits
11 was established in Wetzel. The court concluded that the “cause of action accrues either at the
12 time benefits are actually denied, ... or when the insured has reason to know that the claim has
13 been denied.” 222 F.3d at 649 (citations omitted). Wetzel addressed the situation where a
14 claimant’s claim is denied, but he continued to receive benefits for many months thereafter.
15 Here, Plaintiff was wholly aware that her claim was denied, and benefits actually were denied, in
16 2001. This lawsuit is untimely.

Finally, even if Plaintiff was to claim that her cause of action does not accrue until her appeal was finally denied, her Complaint is still untimely. On March 14, 2002, Verizon advised Plaintiff that her appeal had been denied on March 8, 2002. Exh. D hereto, p. 1. Indeed, the exhibits Plaintiff attached to her Complaint make clear that the Claims Review Committee denied her appeal on March 8, 2002. Complaint, Exh. 2, p. CF 000155, 000175 (Exh. E hereto). Plaintiff's cause of action thus accrued on March 8, 2002. Ford v. International Harvester Co., 399 F.2d 749 (9th Cir. 1968) (applying Washington law; cause of action for breach of contract accrues on breach, not discovery); 1000 Virginia Ltd. P'ship v. Vertecs Corp., 158 Wn.2d 566,

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1 146 P.3d 423 (2006)(same; adopting “discovery rule” only in cases of construction contracts
 2 alleging latent defects).

3 Thus, even if the six year limitation was applicable to Plaintiff’s claim, it expired on
 4 March 10, 2008 (March 9, 2008 was a Sunday). Plaintiff did not file this lawsuit until March 11,
 5 2008. Her complaint is thus barred. Cf. Douchette v. Bethel Schl. Dist. No. 403, 58 Wn. App.
 6 824, 795 P.2d 162 (1990), affirmed on other grounds 117 Wn.2d 805, 818 P.2d 1362 (1991)
 7 (complaint barred when one day beyond statute of limitations).

9 **2. Plaintiff’s Second Cause of Action (Breach of Fiduciary Duty) is Expressly
 10 Barred by the Statute of Limitations Under 29 U.S.C. § 1113(2)**

11 Although absolutely barred for other reasons, see Part C, below, Plaintiff’s cause of
 12 action for breach of fiduciary duty under 29 U.S.C. § 1109 is also governed by a three-year
 13 statute of limitations and is therefore time-barred. Federal law explicitly sets forth a statute of
 14 limitations for breach of fiduciary duty actions brought under ERISA, providing that no action
 15 may be timely commenced after the *earlier of* (1) six years after “the date of the last action
 16 which constituted a part of the breach or violation,” or (2) “three years after the earliest date on
 17 which the plaintiff had actual knowledge of the breach or violation.” 29 U.S.C. § 1113.
 18

19 The three year statute of limitations governs Plaintiff’s cause of action for breach of
 20 fiduciary duty because she had actual knowledge of the alleged breach. Plaintiff was made
 21 aware of Verizon’s March 8, 2002 denial of her appeal relating to long-term disability benefits
 22 by letter dated March 14, 2002. The statute therefore ran, at the latest, on or around March 14,
 23 2005. Because this action was not commenced until March 11, 2008, Plaintiff’s cause of action
 24 for breach of fiduciary duty is time-barred and must be dismissed pursuant to Fed. R. Civ. P.
 25 12(b)(6) for failure to state a claim.
 26

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1 **3. Plaintiff's Third (Equitable Relief) and Fourth (Breach of Contract, Fraud,
2 Misrepresentation, Negligence, and Other Unspecified Common Law and
3 Statutory Duties) Causes of Action are Barred by the Statute of Limitations
4 Pursuant to RCW 4.16.080**

5 Although absolutely barred for other reasons, see Parts D and E, below, Plaintiff's state
6 law causes of action are governed by the applicable state law statutes of limitations. RCW
7 4.18.020(2); Rice v. Dow Chem. Co., 124 Wn.2d 205, 210-11, 875 P.2d 1213 (1994) ("limitation
8 periods are to be governed by the limitations law of a state whose law governs other substantive
9 issues inherent in the claim") (internal quotations omitted).

10 a. **Plaintiff's Third Cause of Action (Equitable Relief).**

11 To the extent Plaintiff's third cause of action for equitable relief is subject to state law,
12 the claim is subject to a three-year statute of limitations. RCW 4.16.080; Hilton v. Mumaw, 522
13 F.2d 588, 595 (9th Cir. 1975) (finding RCW 4.16.080 applicable to both equitable and legal
14 actions). The statute of limitations for any cause of action for equitable relief based on state law
15 expired, at the latest in March, 2005, three years after the denial of Plaintiff's appeal. Because
16 Plaintiff did not commence this action until March 11, 2008, Plaintiff's cause of action for
17 equitable relief based on state law is barred by the statute of limitations and must therefore be
18 dismissed for failure to state a claim.

19 b. **Plaintiff's Fourth Cause of Action (Fraud and Misrepresentation).**

20 A cause of action for fraud or negligent misrepresentation must be commenced within
21 three years from the time the aggrieved party "discovers, or should have discovered, the fact of
22 fraud by due diligence and sustains some actual damage as a result therefrom." RCW
23 4.16.080(4); First Maryland Leasecorp v. Rothstein, 72 Wn. App. 278, 286, 864 P.2d 17 (1993);
24 Browning v. Howerton, 92 Wn. App. 644, 651, 966 P.2d 367 (1998). Here, Plaintiff knew or
25
26

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1 should have known of any alleged fraud or negligent misrepresentation no later than the denial of
2 her appeal for benefits. Nonetheless, Plaintiff waited to commence this action until
3 approximately six years later and well after the expiration of the applicable three-year statute of
4 limitations. As such, Plaintiff's causes of action for fraud and misrepresentation are time-barred
5 and must be dismissed for failure to state a claim.
6

7 c. Plaintiff's Fourth Cause of Action (Negligence).

8 A cause of action for negligence must be commenced within three years from the time a
9 party knows that "some actual and appreciable damage occurred." RCW 4.16.080(2); First
10 Maryland Leasecorp, 72 Wn. App. at 285. Plaintiff had knowledge of "some actual and
11 appreciable damage" at the time her benefits were discontinued in 2001; at the absolute latest,
12 her claim accrued when her appeal for benefits was denied in 2002. However, Plaintiff failed to
13 timely act before the applicable statute of limitations expired in 2005. Accordingly, Plaintiff's
14 cause of action for negligence is time-barred and must be dismissed for failure to state a claim.
15

16 d. Plaintiff's Fourth Cause of Action (Unspecified Common Law and
17 Statutory Claims).

18 To the degree that Plaintiff's allegation of "unspecified" violations of the law is not
19 disposed of by the analysis above, such claims are still time-barred. Washington law is explicit
20 that the three-year statute of limitations applies to any claim for injury to the person or rights of
21 another, unless some other specific statute of limitation applies. RCW 4.16.080(2). The statute
22 of limitations for such unspecified duties expired in 2005.

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1 **C. Plaintiff's Second Cause of Action For Breach of Fiduciary Duty Under ERISA is**
 2 **Barred Because Plaintiff Has Failed to Allege Any Damage to the Plan as a Whole.**

3 In Amalgamated Clothing & Textile Workers Union, AFL-CIO v. Murdock, 861 F.2d
 4 1406, 1414 (9th Cir. 1988), the Court stated that “[a] fiduciary's mishandling of an individual
 5 benefit claim does not violate any of the fiduciary duties defined in ERISA.” (emphasis added)
 6 (citing Massachusetts Mutual Life Ins. Co. v. Russell, 473 U.S. 134, 142 (1985)). 29 U.S.C. §
 7 1132(a)(2) states that a civil action may be brought by “a participant … for appropriate relief
 8 under section 1109 of this title.” “Section 1109(a) authorizes relief only when a fiduciary has
 9 breached a duty to a *plan*,” Reynolds v. Fortis Benefits Ins. Co., 2007 WL 484782, at p. 8 (N.D.
 10 Cal. Feb. 9, 2007) (emphasis in original) (citing Murdock at 1413), and holds fiduciaries
 11 “personally liable” for “losses to the plan.” 29 U.S.C. § 1109(a). “To find a breach of fiduciary
 12 duty based on a denial of individual benefits,” as alleged here, “a plaintiff must allege that the
 13 denial is part of a ‘larger systematic breach of fiduciary obligations.’” Reynolds at p. 8 (quoting
 14 Russell at 147).

16 In the instant matter, “Plaintiff has only alleged facts surrounding the mishandling of [her]
 17 *own* claim for benefits.” Reynolds, at p. 8 (emphasis in original). See Complaint pp. 2-6.
 18 Although she purports to bring second cause of action on behalf of the Plan, she has not
 19 “allege[d] any harm to the plan as a whole, nor has [s]he shown that the mishandling of [her]
 20 claims is part of a larger scheme by defendants to mishandle the claims of anyone else covered
 21 by the Plan.” Reynolds at p. 8. These deficiencies are fatal to her claim; thus, the second cause
 22 of action should be dismissed.

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1 **D. Because Plaintiff has Asserted a Claim Under Section 1132(a)(1) That Could
2 Provide Her Adequate Relief, Plaintiff's Third Cause of Action for Equitable Relief
3 Under Section 1132(a)(3) is Barred**

4 ERISA provides for various civil enforcement provisions, including actions for recovery
5 of benefits and breach of fiduciary duty. 29 U.S.C. § 1132. Section 1132(a)(1)(B) entitles a
6 plaintiff to bring an action to recover benefits owed to her under a plan, to enforce her rights
7 under a plan, or to clarify her rights under a plan. Section 1132(a)(3) authorizes a cause of action
8 for individual equitable relief. But the Supreme Court has held that claims under § 1132(a)(3)
9 are available only when no alternative means of relief, such as a claim for benefits under
10 1132(a)(1)(B), are available. Varity Corp. v. Howe, 516 U.S. 489, 515 (1996) (if Congress
11 elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for
12 further equitable relief, in which case such relief normally would not be 'appropriate'").
13

14 The remedy Plaintiff seeks for past and future long-term disability benefits sought under
15 Section 1132(a)(3) is wholly duplicative of the remedy Plaintiff seeks to recover under Section
16 1132(a)(1). Complaint at ¶¶ 31, 43. Those remedies are thus unavailable under Section
17 1132(a)(3). Varity Corp., 516 U.S. at 515. Moreover, Plaintiff's claim for past and future long-
18 term disability benefits is not an equitable remedy is therefore not available under Section
19 1132(a)(3). Mertens v. Hewitt Assocs., 508 U.S. 248, 256-259 (1993) (monetary damages are
20 not recoverable as equitable relief). As such, Plaintiff's cause of action for equitable relief is
21 barred and should be dismissed for failure to state a claim.
22

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1 **E. ERISA Preempts Plaintiff's Fourth Cause of Action (Breach of Contract, Fraud,
2 Misrepresentation, Negligence, and Other Unspecified Common Law and Statutory
3 Duties)**

4 Plaintiff's causes of action for breach of contract, fraud, misrepresentation, negligence,
5 and other unspecified common law and statutory duties are all preempted by ERISA and must
6 therefore be dismissed for failure to state a claim. Congress provided for a "deliberately
7 expansive" preemption of state law claims relating to welfare benefit plans by enacting ERISA's
8 broad-sweeping preemption clause. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 45-47 (1987);
9 Security Life Ins. Co. of Am. v. Meyling, 146 F.3d 1184, 1188 (9th Cir. 1998) (the Ninth Circuit
10 has "emphasized that 'ERISA contains one of the broadest preemption clauses ever enacted by
11 Congress'"); Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985) (the pre-
12 emption clause was "intended to displace all state laws that fall within its sphere, even including
13 state laws that are consistent with ERISA's substantive requirements"). Specifically, the
14 preemption clause states that ERISA "supercede[s] *any and all* State laws insofar as they may
15 now or hereafter relate to *any* employee benefit plan..." Pilot Life Ins. Co., 481 U.S. at 44-45,
16 47 (emphasis added); 29 U.S.C. § 1144(a).

18 A state law "relates to" an employee benefit plan and triggers ERISA preemption if it (1)
19 has "a reference to" or (2) a "connection with" an ERISA plan. Bankamerica Pension Plan v.
20 McMath, 206 F.3d 821, 829 (9th Cir. 2000) (citing California Div. of Labor Standards
21 Enforcement v. Dillingham Constr. N.A., Inc., 519 U.S. 316, 324 (1997)). To be preempted, a
22 state law need not be "specifically designed" to affect employee benefit plans. District of
23 Columbia v. Greater Washington Bd. of Trade, 506 U.S. 125, 129-30 (1992) (finding that a
24 workers' compensation statute "referred" to a welfare benefit plan because the statute required
25 workers' compensation statute "referred" to a welfare benefit plan because the statute required
26

DEFENDANTS' MOTION TO DISMISS
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1 employers that provide health insurance coverage to its employees to provide equivalent
 2 coverage to employees eligible to receive workers' compensation benefits). Further, where a
 3 state law claim is based upon an alleged wrongful denial of benefits, it is even more likely to be
 4 preempted given ERISA's reserved enforcement remedies. Metropolitan Life Ins. Co. v. Taylor,
 5 481 U.S. 58, 62-63 (1987) (a claim by a beneficiary to recover benefits "falls directly under §
 6 502(a)(1)(B) of ERISA, which provides an exclusive federal cause of action for resolution of
 7 such disputes").

9 Here, Plaintiff has alleged four claims based on Washington law: (1) breach of contract;
 10 (2) fraud; (3) misrepresentation; and (4) negligence, as well as unspecified common law and
 11 statutory duties. Complaint, ¶¶ 44-47. Given that each of Plaintiff's state law claims is based on
 12 Defendants' alleged wrongful denial of long-term disability benefits under an ERISA-regulated
 13 benefit plan, each state law claim "relate[s] to a benefit plan" governed by ERISA, and is
 14 therefore preempted. Pilot Life Ins. Co., 481 U.S. at 47-48; 29 U.S.C. § 1144(a).

16 Plaintiff's state law claims for breach of contract and negligence are preempted by
 17 ERISA because they "relate to" an "employee welfare benefit plan" as they seek to recover
 18 benefits allegedly owed under such plan. Crull, 58 F.3d at 1390 (noting ERISA preempts state
 19 common law contract and tort claims where action attempts to recover benefits allegedly owed
 20 under a plan); Pilot Life Ins. Co., 481 U.S. at 47-48 (ERISA preempts state law breach of
 21 contract and tort claims based on improper processing of a claim for benefits). Plaintiff's state
 22 law claims for fraud, misrepresentation, and other unspecified common law and statutory duties
 23 are similarly preempted. Olson v. Gen. Dynamics Corp., 960 F.2d 1418, 1421, 1423 (9th Cir.
 24 1991) (cause of action for fraud preempted where a claimant asserted that he received fewer
 25 26

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1 benefits than he was lead to believe he would receive); Cleghorn v. Blue Shield of Am., 408 F.3d
2 1222, 1224-25 (9th Cir. 2005) (statutory claims for denial of emergency care benefits deemed to
3 conflict with exclusivity of ERISA remedial scheme and therefore preempted). Because each of
4 Plaintiff's state law claims is preempted by ERISA's broad-sweeping preemptive clause, each
5 should be dismissed for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6)
6

7 **IV. CONCLUSION**

8 For all of the foregoing reasons, Defendants respectfully request that the Court grant their
9 motion to dismiss Plaintiff's Complaint for failure to state a claim pursuant to Fed. R. Civ. P.
10 12(b)(6).

11
12 DATED: May 15, 2008.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 15, 2008, I electronically filed the foregoing with the Clerk of
3 the Court using the CM/ECF system which will send notification of such filing to the parties
in the above case.

4

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